

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE L. BERNAL, on behalf of	)	Case No. CV 15-01448 DDP (PLAx)
himself and all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING IN PART AND</b>
	)	<b>DENYING IN PART DEFENDANT FEDEX</b>
v.	)	<b>GROUND PACKAGE SYSTEM INC.'S</b>
	)	<b>MOTION TO DISMISS PLAINTIFFS'</b>
FEDEX GROUND PACKAGE SYSTEM	)	<b>FIRST CAUSE OF ACTION FOR FRAUD</b>
INC., a Delaware	)	<b>AND/OR STRIKE PORTIONS OF</b>
corporation; FEDEX	)	<b>PLAINTIFFS' FIRST AMENDED</b>
CORPORATION, a Delaware	)	<b>COMPLAINT PURSUANT TO FRCP RULES</b>
corporation; and FLAT RATE	)	<b>12(b)(6) and 12(f)</b>
TRUCK REPAIR, INC., a	)	
California corporation,	)	
	)	
Defendants.	)	[Dkt. No. 23]
	)	

Presently before the Court is Defendant FedEx Ground Package System, Inc. ("FedEx Ground")'s Motion to Dismiss Plaintiffs' First Cause of Action for Fraud and/or Strike Portions of Plaintiffs' First Amended Complaint. (See Dkt. No. 23.) Having considered the parties' submissions and heard oral argument, the Court GRANTS the motion to dismiss, GRANTS in part and DENIES in part the motion to strike, and adopts the following order.

1 **I. BACKGROUND**

2 Plaintiffs, a group of 73 individuals, are current and former  
3 pickup truck drivers for FedEx Ground. (First Amended Complaint  
4 ("FAC"), Dkt. No. 15, ¶ 1.) Defendant FedEx Ground is a package  
5 shipping company and a subsidiary of Defendant FedEx Corporation.  
6 (Id. ¶ 2.) Plaintiffs allege that FedEx Ground and FedEx  
7 Corporation (collectively, "FedEx") "contracted and created various  
8 individuals and companies in California to misclassify Plaintiffs  
9 as independent contracts [sic] rather than employees." (Id. ¶ 3.)  
10 Plaintiffs allege that, as part of this alleged scheme, FedEx  
11 leased tractor vehicles from various individuals and companies in  
12 California. (Id. ¶ 4.) Plaintiffs name FedEx Ground, FedEx  
13 Corporation, and 32 of the aforementioned "individuals and  
14 companies" (the "Trucking Companies") as defendants in the FAC.

15 Plaintiffs bring this lawsuit on behalf of themselves and a  
16 putative class, defined in the FAC as "[a]ll persons who: 1) drove  
17 a tractor with a FedEx Ground logo which was leased to FedEx Ground  
18 Package, Inc. by other trucking companies; 2) received daily routes  
19 from terminals belonging to FedEx Ground Package, Inc located in  
20 California; 4) received a W2 or Paycheck from trucking companies;  
21 and 5) within the employment period from 2010 to the present day or  
22 date of judgment." (Id. ¶ 18.)

23 Plaintiffs allege that the Trucking Companies' primary  
24 business is leasing tractor vehicles to FedEx, which then uses the  
25 tractors to connect and transport trailers throughout the country.  
26 (Id. ¶ 5.) Plaintiffs allege that the Trucking Companies issue W-  
27 2s and paychecks to Plaintiffs, but that the Trucking Companies  
28 "have no other business purpose and merely serve as shell

1 companies, payroll or staffing companies" for FedEx. (Id.)  
2 Plaintiffs allege that FedEx engaged in a fraudulent scheme to  
3 misclassify Plaintiffs as independent contractors rather than  
4 employees, and that FedEx conspired with the Trucking Companies to  
5 carry out this scheme. (Id. ¶¶ 6, 9.)

6 Plaintiffs allege that they are employees of both the Trucking  
7 Companies and FedEx. (Id. ¶ 9.) Plaintiffs allege that FedEx,  
8 rather than the Trucking Companies, controlled the terms of their  
9 employment and their pay, including "the method and calculation of  
10 payments . . . by compensating Plaintiffs using a complex method  
11 and system, and only for authorized routes and assignments." (Id.  
12 ¶ 11.) Plaintiffs allege that the Trucking Companies'  
13 relationship with FedEx should not have gone beyond the lease of  
14 the tractors; instead, Plaintiffs allege, the Trucking Companies  
15 improperly inserted themselves in Plaintiffs' employment  
16 relationship with FedEx by (1) issuing W-2s and paychecks to  
17 Plaintiffs and (2) assisting FedEx in hiring Plaintiffs. (Id. ¶  
18 10.) Plaintiffs allege that FedEx "decided who to hire, terminate,  
19 and suspend," and therefore, under California law, Plaintiffs  
20 should have been classified as FedEx employees. (Id. ¶¶ 12, 13,  
21 26.)

22 Plaintiffs further allege that FedEx's practices with respect  
23 to Plaintiffs' daily routes and assignments violated California  
24 employment and labor codes. (Id. ¶ 26.) Plaintiffs allege that  
25 FedEx employees and dispatchers gave drivers their daily routes and  
26 assignments at FedEx terminals, after which the drivers' tractors  
27 would be connected to FedEx trailers in order to drive packages to  
28 various terminals and hubs across the country. (Id. ¶ 27.) Once

1 drivers would reach their destination terminal, Plaintiffs allege  
2 that FedEx would instruct drivers either to "drop and hook" new  
3 trailers or to wait for the next assignment. (Id. ¶ 28.)  
4 Plaintiffs allege that the wait time would often take hours or  
5 days. (Id.) Plaintiffs allege that FedEx would request the  
6 drivers run quick local routes while they waited for the next  
7 assignment, and that if the drivers refused, they would be  
8 retaliated against or terminated. (Id.) Plaintiffs allege that if  
9 they returned home without waiting for a new route or assignment,  
10 they were not compensated for the return mileage. (Id.)

11 Additionally, Plaintiffs allege that Defendants made false  
12 statements in conjunction with Plaintiffs' employment that harmed  
13 Plaintiffs. (Id. ¶ 49.) Plaintiffs allege that Defendants falsely  
14 told Plaintiffs that (1) they would be employed and hired by FedEx,  
15 and (2) that they were employed by FedEx. (Id. ¶ 50.) Plaintiffs  
16 also allege that Defendants' representations to Plaintiffs included  
17 a badge on which the FedEx logo was printed but that stated:  
18 "NOTICE: The holder of this badge is a VENDOR to FedEx Ground. The  
19 holder is not an employee of FedEx Ground. This badge is not to  
20 be duplicated." (Id. ¶ 51 & Exh. E.) Plaintiffs further allege  
21 that Defendants posted various job listings that clearly stated  
22 that Plaintiffs would be working for FedEx. (Id. ¶ 52 & Exh. F.)  
23 Plaintiffs also allege that FedEx made it appear as if the Trucking  
24 Companies were the sole employers of Plaintiffs and instructed the  
25 Trucking Companies to issue W-2s and paychecks to Plaintiffs,  
26 despite the fact that Plaintiffs were employees of FedEx. (Id. ¶¶  
27 58, 60.)

1 Plaintiffs allege, that due to FedEx's misclassification of  
2 Plaintiffs and FedEx's driver policies, Defendants violated various  
3 California labor code provisions and committed fraud. Plaintiffs  
4 TAC alleges ten causes of action against Defendants: (1) fraud; (2)  
5 failure to pay earned wages, in violation of Labor Code § 204; (3)  
6 failure to pay overtime wages, in violation of Labor Code § 1194;  
7 (4) failure to provide meal periods, in violation of Labor Code §§  
8 512, 226.7, 204, and 1198; (5) failure to provide rest periods, in  
9 violation of Labor Code §§ 226.7, 204, and 1198; (6) recovery of  
10 deductions from wages, pursuant to Labor Code §§ 221 and 223; (7)  
11 waiting time penalties, pursuant to Labor Code § 203; (8) failure  
12 to provide accurate itemized statements, in violation of Labor Code  
13 § 226; (9) unlawful, unfair and fraudulent business practices, in  
14 violation of Business & Professions Code § 17200, et seq.; and (10)  
15 violation of the Labor Code Private Attorneys General Act of 2004  
16 and Labor Code § 2698.

17 Defendant FedEx Ground now moves to dismiss for failure to  
18 state a claim Plaintiffs' first cause of action for fraud, and  
19 further moves to strike portions of the FAC. (Dkt. No. 23.)

## 20 **II. LEGAL STANDARD**

21 A 12(b)(6) motion to dismiss requires the court to determine  
22 the sufficiency of the plaintiff's complaint and whether or not it  
23 contains a "short and plain statement of the claim showing that the  
24 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under  
25 Rule 12(b)(6), a court must (1) construe the complaint in the light  
26 most favorable to the plaintiff, and (2) accept all well-pleaded  
27 factual allegations as true, as well as all reasonable inferences  
28 to be drawn from them. See Sprewell v. Golden State Warriors, 266

1 F.3d 979, 988 (9th Cir. 2001), amended on denial of reh'g, 275 F.3d  
2 1187 (9th Cir. 2001); Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th  
3 Cir. 1998).

4 In order to survive a 12(b)(6) motion to dismiss, the  
5 complaint must "contain sufficient factual matter, accepted as  
6 true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atl.  
7 Corp. v. Twombly, 550 U.S. 544, 570 (2007)). However,  
8 "[t]hreadbare recitals of the elements of a cause of action,  
9 supported by mere conclusory statements, do not suffice." Iqbal,  
10 556 U.S. at 678. Dismissal is proper if the complaint "lacks a  
11 cognizable legal theory or sufficient facts to support a cognizable  
12 legal theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d  
13 1097, 1104 (9th Cir. 2008); see also Twombly, 550 U.S. at 561-63  
14 (dismissal for failure to state a claim does not require the  
15 appearance, beyond a doubt, that the plaintiff can prove "no set of  
16 facts" in support of its claim that would entitle it to relief). A  
17 complaint does not suffice "if it tenders 'naked assertion[s]'  
18 devoid of 'further factual enhancement.'" Iqbal, 556 U.S. at 678  
19 (quoting Twombly, 550 U.S. at 556). "A claim has facial  
20 plausibility when the plaintiff pleads factual content that allows  
21 the court to draw the reasonable inference that the defendant is  
22 liable for the misconduct alleged." Id. The Court need not accept  
23 as true "legal conclusions merely because they are cast in the form  
24 of factual allegations." Warren v. Fox Family Worldwide, Inc., 328  
25 F.3d 1136, 1139 (9th Cir. 2003).

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1 **III. DISCUSSION**

2 **A. Motion to Dismiss**

3 FedEx Ground argues that Plaintiffs' fraud claim should be  
4 dismissed because it is predicated on alleged misrepresentations of  
5 law, which cannot form the basis of a claim for fraud. Plaintiffs  
6 contend that they do allege FedEx Ground made misrepresentations of  
7 fact - specifically, that FedEx Ground falsely stated that the  
8 staffing and work assignments for drivers would be established by  
9 the contractor Trucking Companies and not FedEx Ground. Plaintiffs  
10 also argue that the badge given to the drivers was misleading,  
11 since it had a FedEx logo and bar code, and therefore led drivers  
12 to believe they worked for FedEx.

13 Misrepresentations of law cannot form the basis for a fraud  
14 claim. See Miller v. Yokohama Tire Corp., 358 F.3d 616, 621 (9th  
15 Cir. 2004). Statements of law are "normally regarded as  
16 expressions of opinion which are generally not actionable in fraud  
17 even if they are false." Id. However, reliance on  
18 misrepresentations of law could form the basis of an actionable  
19 fraud claim when the party making the representation: "1) purports  
20 to have special knowledge; 2) stands in a fiduciary or similar  
21 relation of trust and confidence to the recipient; 3) has  
22 successfully endeavored to secure the confidence of the recipient;  
23 4) or has some other special reason to expect that the recipient  
24 will rely on his opinion, misrepresentations of law may result in  
25 actionable fraud." Id.

26 As an initial matter, none of the four exceptions to the rule  
27 in Miller appear to be present here. Plaintiffs have not alleged  
28 that FedEx purported to have some special knowledge, and the Court

1 cannot see how FedEx would have some special knowledge of  
2 employment law in this context. Plaintiffs similarly have not  
3 alleged that Defendants stood in a fiduciary relationship with  
4 Plaintiffs or that Defendants "endeavored to secure the confidence"  
5 of any of the Plaintiffs. Finally, Plaintiffs have not alleged  
6 that Defendants had a special reason to expect that any of the  
7 Plaintiffs would rely on the alleged misrepresentations. All of  
8 the relationships alleged in the FAC would appear to the Court to  
9 be standard employee/employer or contractor/employer relationships.

10 Furthermore, the alleged misrepresentations in the FAC appear  
11 to be misrepresentations of law. The alleged misrepresentations in  
12 the FAC fall seemingly into two categories of misrepresentations  
13 that form the basis of the alleged fraud: (1) Defendants misled  
14 Plaintiffs in materials stating that Plaintiffs were contractors,  
15 because Plaintiffs were in actuality employees of FedEx; and (2)  
16 Defendants misled Plaintiffs to believe they were employed by FedEx  
17 when in fact they were employed by the independent Trucking  
18 Companies. These allegations appear to be self-contradictory.  
19 Plaintiffs cannot have it both ways; they cannot argue on one hand  
20 that the fraud was committed when FedEx lied to them by convincing  
21 them they were hired and employed by FedEx, while at the same time  
22 arguing that the fraud was based on misrepresentations that  
23 Plaintiffs were contractors when in fact they should have been  
24 classified as employees.

25 As for the first category of misrepresentations, the Court  
26 concludes that these are misrepresentations of law, not fact. A  
27 statement that an individual is a contractor, vendor, or an  
28 employee of a contractor, is a statement of law. See Harris v.



1 Vector Mktg. Corp., 656 F. Supp. 2d 1128, 1136 (N.D. Cal. 2009)  
2 (stating that under federal and state law, the legal conclusion of  
3 whether workers are employees or independent contractors is a  
4 question of law). Therefore, although the facts may ultimately  
5 show that Plaintiffs were misclassified as contractors rather than  
6 employees, a misrepresentation by Defendants that Plaintiffs were  
7 employed by the Trucking Companies could not form the basis of a  
8 fraud claim.

9 As for the second category of misrepresentations, the FAC does  
10 not allege facts that support Plaintiffs' contention that FedEx  
11 Ground told Plaintiffs they would be employed by FedEx. The FAC  
12 references a badge that has the FedEx logo; however, the FAC also  
13 alleges that the badge (an image of which is attached to the FAC as  
14 Exhibit E) clearly states that the bearer is a "vendor" of FedEx  
15 and disclaims that the bearer is an employee. Furthermore, the  
16 Craigslist ad attached as Exhibit F to the FAC states that a "FedEx  
17 ground contractor" is hiring, not FedEx itself. (FAC ¶ 52 & Exh.  
18 F.)

#### 19 **B. Motion to Strike**

20 FedEx Ground also moved to strike portions of the FAC. First,  
21 FedEx Ground requested that the Court strike Item 11 in the "Prayer  
22 for Relief," which pertains to Plaintiffs' request for punitive  
23 damages with respect to the fraud claim. (See FAC at 34.) Second,  
24 FedEx Ground requests that the Court strike the portion of the  
25 class definition that includes individuals who were employed "from  
26 2010," arguing that the longest statute of limitations for any of  
27 Plaintiffs' claims reaches back only to July 22, 2010. (See id. ¶  
28 18.)

1 Because Plaintiffs do not oppose the motion to strike the  
2 "from 2010" portion of the class definition, the Court GRANTS the  
3 motion to strike this language from the FAC. Because the Court is  
4 dismissing Plaintiffs' fraud claim with leave to amend, the Court  
5 DENIES the motion to strike Plaintiffs' request for punitive  
6 damages as moot.

7 **IV. CONCLUSION**

8 For the foregoing reasons, FedEx Ground's motion to dismiss is  
9 GRANTED without prejudice. The motion to strike is GRANTED in part  
10 as to the date portion of the class definition and DENIED as to the  
11 request for punitive damages.

12  
13  
14 IT IS SO ORDERED.

15  
16  
17 Dated: July 14, 2015

  
DEAN D. PREGERSON  
United States District Judge